

this is not the fact.¹³ The prospect of being denied this essential service will be sufficient in many instances to coerce customers into making payments for services that they know or suspect are deceptive or misleading or that were unauthorized.

Finally, preserving the existing bill adjustment procedure is

or how to contact that provider.¹⁴ Accordingly, it would be very difficult for a customer to pursue a billing dispute in the way set out in the proposal. Generally, consumers view the "telephone company" as the contact on these matters.¹⁵ Accordingly, it is appropriate that a consumer's affirmative obligation should only extend to the local telephone company or the appropriate inter-exchange carrier.

Further, with respect to unauthorized calls, a procedure which will credit a consumer for such calls if a bona fide complaint is made is essential, given the nature of the pay-per-call transaction. Unlike a credit card or debit card transaction, it cannot be presumed from the facts that a call has been made and no illegal act (such as theft of services) has occurred, or that the person who is responsible for the telephone bill at the number used

¹⁴Although Section 308.5 will require a pay-per-call service provider to give its name during a preamble and the TDDRA requires a procedure to allow consumers to obtain access to such information, there is no assurance that consumers will be aware of this opportunity.

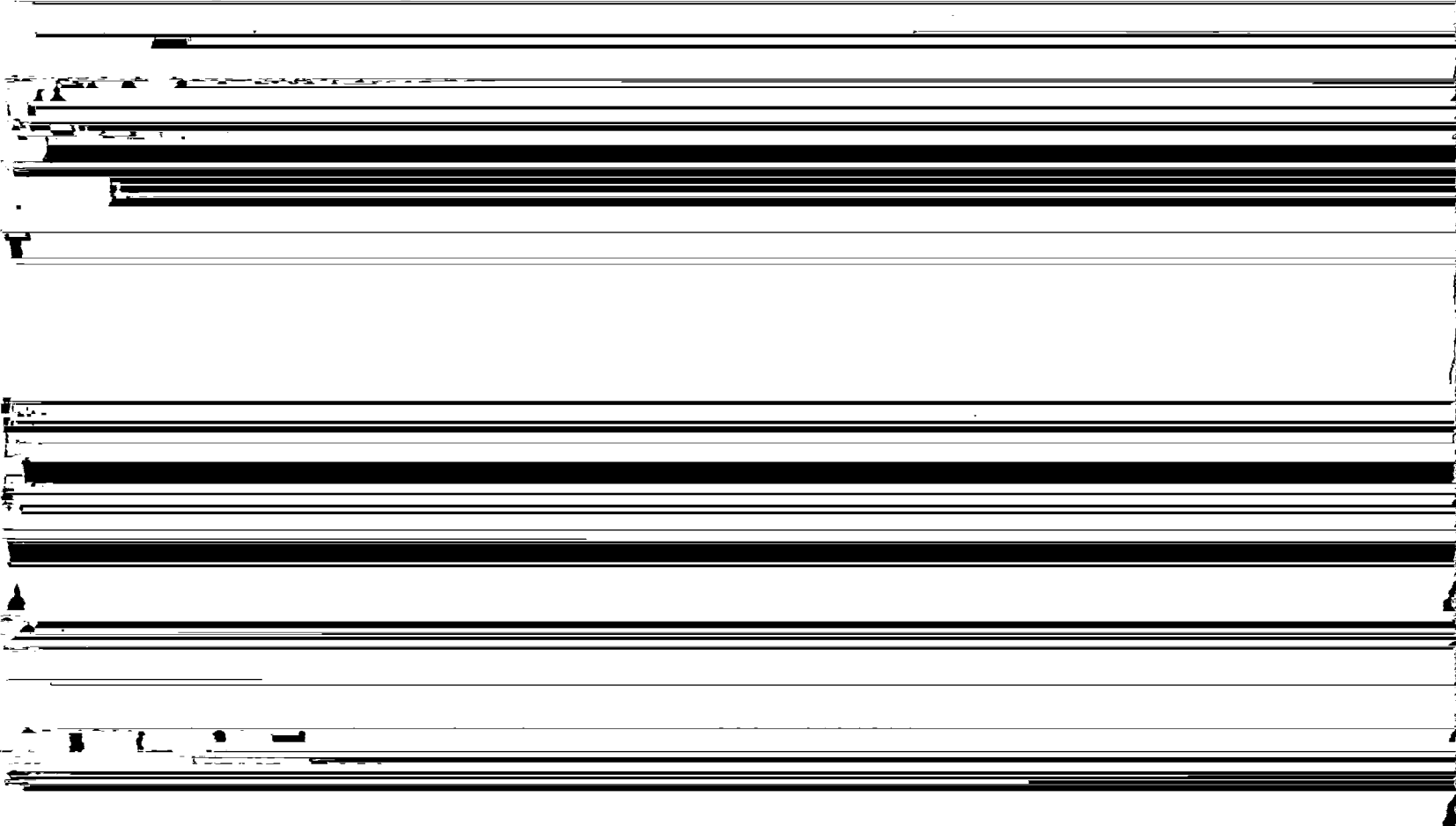
¹⁵The University of Tennessee study, n. 13, supra., also asked consumers "if a person had a complaint about 900 number service, who would they contact?" Responses were as follows:

Attorney General	0.4%
Public Service Commission	10.7%
Local Authorities	1.6%
Phone Company	42.1%
Division of Consumer Affairs	0.7%
FCC	2.1%
Better Business Bureaus	5.1%
Other	3.8%
Don't Know	33.5%

According to this information, consumers are most likely to contact the phone company if they have a complaint about a pay-per-call service.

for the call has in fact authorized a charge or even knows about it. Parents who are unaware of the availability of certain pay-per-call services or, just as important, the potential that their minor children, or other non-responsible members of their family, may make calls to such numbers, should not be forced to bear what, in many instances, can be hundreds or thousands of dollars in charges for pay-per-call services without any agreement on their part that they will be liable for such charges.¹⁶

Presently, carriers or their agents frequently provide credits for pay-per-call charges upon receipt of a bona fide complaint. This process is efficient and provides the best protection for consumers from the threat of having to pay charges for services that are the product of deception or misrepresentation. The rules appear to adopt this approach by specifically authorizing billing



mechanisms at their disposal, including the use of collection efforts for individuals who repeatedly make calls and incur relatively large charges, blocking access to their service by non-paying individuals or the utilization of credit cards or direct billing. Finally, billing entities should have the authority to ~~deny billing and/or connections to individuals who abuse the billing~~

A consumer's interest in telephone service is obvious. Most consumers are extremely careful about their telephone bills, viewing the service as one that they cannot risk losing. Consumers must be given an opportunity to raise any disputes they have regarding pay-per-call charges without the perceived threat of losing their telephone service.

G. BILLING ENTITIES SHOULD BE REQUIRED TO INFORM CONSUMERS OF THE PAY-PER-CALL BILLING DISPUTE PROCEDURES ON THE PAY-PER-CALL BILL.

The Commission has proposed that billing entities send an annual billing rights statement to all customers to inform them of their rights and the steps they must take to dispute pay-per-call charges. It is just as important that, at the time that they receive their pay-per-call bill, consumers be notified of the procedure they need to follow if they question a pay-per-call charge. It is crucial that this fact be communicated to customers to ensure that they respond in a timely manner and do not inadvertently waive their right to challenge a deceptive or unauthorized service.

The States propose that the rules require on every pay-per-call telephone bill a statement informing consumers of their need to dispute a new pay-per-call charge within the time specified by the Commission and a reference to a toll-free telephone number that they should call to lodge the dispute with the billing entity.

H. OTHER SUGGESTED CHANGES TO BILLING DISPUTE RULES.

Pay-per-call services in effect combine a credit card with a customer's local and long distance telephone service. During the past two decades legislation and regulations evolved to address comprehensively consumer credit relationships. The billing and dispute resolution procedure for credit card users is one example. However, there are significant differences between pay-per-call services and credit cards. The Commission must closely examine these distinctions to formulate sufficient protections for customers.

Proposed Rules

Time for Filing Request For Billing Review, Sec. 308.7(b).

The rule states that a consumer may initiate a billing review no later than sixty (60) days after the billing entity transmits the first billing statement that contains the charge for the pay-per-call purchase. The rule takes account of circumstances where goods or services promised to be provided are not delivered (Section (b), ft.(2)) but in certain other instances a sixty-day period may not be enough time for a customer to know whether the pay-per-call service provided is all that was promised (e.g., in a sweepstakes or prize award schemes).

Therefore, the time for a consumer to request a bill review should be expanded to 90 days, and further clarified to provide that if a "service" includes the subsequent delivery of a prize, award or other product, that a consumer has 90 days to complain

from the date that the goods or services arrive or are supposed to arrive.

Charge For Unsuccessful Billing Review. Sec. 308.7(h). This section states that a customer can be charged "a reasonable fee" if a claim for an adjustment is made but it is determined that no billing error has occurred. The States unequivocally oppose this provision.

There is no precedent for permitting a billing entity to charge a customer for a billing error review simply because the billing entity makes a determination that the complaint was not sufficient to require the charge to be removed from the bill. Moreover, the potential that even a "reasonable" fee could discourage customers from complaining about a particular pay-per-call charge should be enough to dissuade the Commission from permitting such a fee on public policy grounds. Finally, claims of billing error relating to pay-per-call services are just one of many types of billing disputes that today are handled free of charge by local telephone companies or inter-exchange carriers each day. It would cause confusion to consumers and additional administrative burdens to telephone companies if billing entities have to identify and separate the cost of responding to pay-per-call complaints.

Limitation On Collection For Failure To Follow Dispute Rules. Sec. 308.7(i). This section states that a billing entity that fails to comply with the billing dispute provisions of the rule forfeits its right to collect from a customer amounts disputed by

that customer "up to fifty dollars per transaction." There does not appear to be any justification for this limitation. If the total charge for the call was \$100, for example, and a billing entity consciously refused to comply with this rule, as proposed, the rule would, nonetheless, permit the billing entity to attempt to collect the \$50 difference. It would seem reasonable, therefore, to eliminate any cap on the amount that would be barred from collection by a billing entity if it fails to comply with these rules.

Assertion of Claims and Defenses, Sec. 308.7(1). This section contains a provision, similar to the Fair Credit Billing Act, that a billing entity or providing carrier that seeks to collect charges from a customer is subject to all of the claims and defenses

Compilation of Complaint Data. The States recommend that the rule include a requirement that common carriers record and compile records regarding the numbers of complaints and credits issued against pay-per-call providers.¹⁹ This information should be maintained and made available to law enforcement officials, including the Commission and the State Attorneys General offices. These records should be available to the billing entity for use in considering a consumer's claim that a particular pay-per-call service misrepresented what a consumer would receive from a program or otherwise acted improperly.

CONCLUSION

State Attorneys General support the Federal Trade Commission's efforts to formulate regulations consistent with these recommendations to prevent unfair and deceptive pay-per-call practices and implement congressional objectives embodied in the Telephone Disclosure and Dispute Resolution Act of 1992. The proven potential for fraud requires strict disclosure measures and service requirements as well as a consumer friendly dispute resolution process which places the cost of fraud on the perpetrators.

The members of the Telecommunications Subcommittee of the National Association of Attorneys General, Consumer Protection Committee, look forward to working with the Commission and industry

¹⁹It is already common practice for the inter-exchange carriers

representatives to construct a foundation for responsible pay-per-call services to provide convenience and value to consumers.

Dated this 7th day of April, 1993.

Respectfully submitted,

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ATTACHMENTS

Attachment

Recommended Amendments To Rules Proposed By The Federal Trade Commission	1
Citizen Research Study "Selling Information Services During 800 And 900 Number Calls: The Need For Greater Consumer Protection" <u>October 2, 1992</u>	2
University of Tennessee Study	3

RECOMMENDED AMENDMENTS TO RULES PROPOSED
BY THE FEDERAL TRADE COMMISSION

PART 308--REGULATIONS UNDER THE TELEPHONE DISCLOSURE AND DISPUTE
RESOLUTION ACT OF 1992

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§ 308.2 Definitions.

(a) *Bona fide educational service* means any pay-per-call service that provides information or instruction relating to education, subjects of academic study, or other related areas of school study- appropriate for children under age 12, but does not include contests, sweepstakes or games of chance.

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(e) *Presubscription or comparable arrangement* means a contractual agreement established prior to the initiation of a pay-per-call service between a provider of pay-per-call services and a consumers. The agreement must be evidenced by a document setting forth among other things the terms of the agreement which is provided a customer prior to providing pay per call services. No

is dependent upon options selected by the caller), the advertisement shall state that the total amount of the charges increases each minute that the customer stays on the line and the average cost of a call that the length of the call is subject to caller discretion, unless it is otherwise clear from the content that such is the case.

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(v) ~~If the caller may be transferred to another pay-per-call service, the advertisement shall disclose the cost of the other call, in accordance with §§ 308.3(a)(1)(i), (ii), (iii), and (iv). Providers of pay-per-call services shall not transfer callers to~~

disclose a free alternative method of entry and instructions on how to enter.

(3)(ii) ~~In a print advertisement, the disclosure shall be parallel with the base of the advertisement, in at least 12-point type, and of a color or shade that readily contrasts with the background of the advertisement.~~ 1. In a printed advertisement, the statement of odds shall be stated in immediate proximity to each listing of the prize in each place the prize appears on the advertisement and shall be in the same size and boldness of type as the listing of the prize.

2. The statement of odds shall include, for each prize, the total number of prizes to be given away and the total number of potential entries. The number of prizes and potential entries

4. Fail to distribute all prizes within six months of the initiation of the sweepstakes.

5. Promote a sweepstakes after a major prize has been claimed.

6. Misrepresent in anyway the value, characteristics, benefits, restrictions, quality or uses of any prize, award or product offered through the sweepstakes or promotion.

(iv) ~~(iii)~~

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(5) All disclosures and all other text of pay-per-call advertisements shall be properly punctuated, and shall be stated in language consistent with common grammatical usage.

(6) Providers of pay-per-call services that offer sweepstakes shall disclose that the promotion may be illegal in some states.

(7) Nothing in this section shall be construed to permit an activity prohibited under state law.

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(c) *Federal Programs.*

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(5) All disclosures and all other text of pay-per-call advertisements shall be properly punctuated, and shall be stated in language consistent with common grammatical usage.

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(e) *Advertising to individuals under the age of 18.*

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(3) For purposes of § 308.3(e) clear and conspicuous shall

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(6) The presumption contained in § 308.3(e)(5) may be rebutted with competent and reliable audience composition data or other competent and reliable evidence demonstrating that at least sixty-seven percent of the receiving audience is composed primarily of individuals aged 18 or older.

(7) All disclosures and all other text of pay-per-call advertisements shall be properly punctuated, and shall be stated in language consistent with common grammatical usage.

.

(g) *Telephone solicitations.* The provider of pay-per-call services shall ensure that any telephone message that solicits calls to the pay-per-call service discloses the cost of the call and the rest of the solicitation message in a slow and deliberate manner, and in a reasonably understandable volume, in accordance with §§ 308.3(a)(1)(i) through (v).

(h) *Referral to toll free and local telephone numbers.* The provider of pay-per-call services is prohibited from referring in advertisements to an 800 telephone number, or any other telephone number advertised as or widely understood to be toll free or local cost, if callers to that number may be connected to an access number for, or may otherwise be transferred to, a pay-per-call service, or otherwise solicited to accept collect charges for or purchase pay-per-call services.

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§308.4 Special rules for infrequent publications.

(c) Publications claiming an exemption pursuant to 308.4 shall be required to disclose in the same size type as the pay-per-call number: "THIS CALL WILL RESULT IN A SUBSTANTIAL CHARGE ABOVE THOSE OF LONG DISTANCE CALLS. PLEASE LISTEN CLOSELY TO THE PREAMBLE TO THE CALL WHICH WILL DISCLOSE THE PRICE PER MINUTE AND GIVE YOU AN OPPORTUNITY TO HANG UP WITHOUT BEING CHARGED."

§ 308.5 Pay-per-call service standards.

(a) *Preamble message.* The provider of pay-per-call services shall include, in before each pay-per-call message, an introductory disclosure message ("preamble") in the same language as that principally used in the pay-per-call message, that clearly, in a slow and deliberate manner and in a reasonably understandable volume and in the following sequence:

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(e) *Billing limitations.* The provider of any pay-per-call services is prohibited from billing consumers in excess of the amount described in the preamble for ~~these~~ that services and from billing for any services provided in violation of any section of this rule or in violation of any other law, regulation or rule.

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(h) *Prohibition concerning toll free and local numbers.* The provider of pay-per-call services is prohibited from providing such services through an 800 number or other telephone number advertised as or widely understood to be toll free or local.

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(j) *Correction of Billing Records and Refunds to consumers.* The provider of pay-per-call services shall be liable for the correction of billing records and for refunds to consumers who have been billed for pay-per-call services and who have paid the

written explanation and copies of documentary evidence of the customer's indebtedness and summary of necessary further action to dispute the error.

(g) *Customer's right to withhold disputed amount: limitation*

possible. We must hear from you no later than 60 90 days after we sent you the first bill on which the error or problem appeared.

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Your Rights and Our Responsibilities After We Receive Your Notice

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After we receive your notice, you do not have to pay any questioned amount, and no one may try to collect it, until we are finished investigating. ~~We can continue to bill you for the amount you question, and you~~ You are still obligated to pay the parts of your bill that are not in question. PLEASE NOTE THAT YOUR TELEPHONE SERVICE WILL NOT BE DISCONNECTED OR TERMINATED FOR FAILURE TO PAY FOR PAY-PER-CALL SERVICES.

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(2) *Alternative summary statement.* As an alternative to §308.7(n)(1), a billing entity may mail or deliver, on or with each billing statement, a statement substantially similar to the following:

In Case of Errors or Questions About Your Bill

~~If you think your 900 [or other pay per call] number telephone bill is wrong, or~~ you have a right to dispute the pay-per-call service charges on this bill. If you need more information about a 900 [or other pay-per-call] number call billed to your account, let us know as soon as possible. We must hear from you no later than 60 90 days after we sent you the first bill on which the error or problem appeared.

.

(3) Monthly billing statement. A billing entity shall include on each monthly billing statement for telephone-billed purchases mailed or delivered to consumers the following statements:

YOUR TELEPHONE SERVICE WILL NOT BE DISCONNECTED OR TERMINATED FOR FAILURE TO PAY FOR PAY-PER-CALL SERVICES.

IF YOU WANT TO DISPUTE ANY OF THE CHARGES FOR 900 NUMBER [OR OTHER PAY-PER-CALL] TELEPHONE CALLS APPEARING ON THIS BILL CALL OUR TOLL FREE CUSTOMER SERVICE LINE AT [STATE 800 TOLL FREE NUMBER OR REFER TO TOLL FREE NUMBER ALREADY APPEARING ON THE PAGE] WITHIN 90 DAYS OF THE FIRST BILLING FOR THE CHARGE.

IF YOU DISPUTE A PAY-PER-CALL CHARGE AND IT IS REMOVED FROM YOUR TELEPHONE BILL, THE VENDOR OF THE SERVICE MAY ATTEMPT TO COLLECT THE DEBT THROUGH OTHER DEBT COLLECTION PROCEDURES.

(4) If a customer disputes a charge for pay-per-call services and requests removal, a billing agent shall remove that charge for pay-per-call services from subsequent billing statements.

Citizens Research

Citizens Research

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SELLING INFORMATION SERVICES DURING 800 AND 900 NUMBER CALLS: THE NEED FOR GREATER CONSUMER PROTECTION

EXECUTIVE SUMMARY

A. BACKGROUND

A recent petition to the Federal Communications Commission by the members of the National Association of Attorneys General concluded that pay-per-call services offered during 800 number calls are a significant problem for consumers because they create confusion in the customer's mind about whether, how and when billing takes place and are an open invitation to misleading and deceptive practices by marketers.

Based on a national random sample survey of over 1,000 respondents and an extensive review of the consumer marketing literature, this report provides dramatic evidence supporting that conclusion and documents the need for increased consumer protection to prevent fraud and deception during such calls.

B. SURVEY RESULTS

Billing for traditional calls is quite well established in the public's mind, while new types of calls are misunderstood (see Table ES-1).

- o 96% of respondents to the survey say, correctly, that 800 number calls are "free" and 80% say that regular long distance calls are billed.
- o In contrast 50% say, incorrectly, that 900 number calls are "free."
- o 84% do not expect 800 number calls to involve billing for information services, even when the offer of information services is explicitly stated.

Respondents do not support the "just punch one" approach which is preferred by marketers for billing these services.

- o 35% percent said that service should not be offered in this manner at all and another 31% said willingness to be billed should be signaled by punching in a telephone or credit card number.